

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SKYE PREUSSNER,

Civ No. 6:11-cv-6193-TC

Plaintiff,

ORDER

v.

OZ FITNESS OR, INC., and OZ
FITNESS HOLDING CORP.,

Defendants.

AIKEN, Chief Judge:

Plaintiff filed suit alleging violations of the Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA) and gender discrimination under Title VII and Or. Rev. Stat. § 659A.030. Magistrate Judge Coffin issued Findings and Recommendation and recommended that defendants' motion for summary judgment be denied. The matter is now before me. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a de novo determination of that portion of the magistrate judge's report. See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Defendants filed timely objections to the Findings and Recommendation. I have, therefore, given de novo review of Magistrate Judge Coffin's rulings.

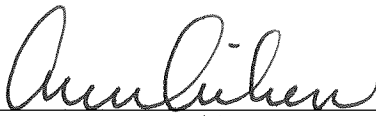
The background facts and parties' arguments are set forth in the parties' briefs and in the Findings and Recommendation, and I do not repeat them here. Ultimately, I agree with the Findings and Recommendation that genuine issues of material fact preclude summary judgment. Although defendants disagree with the court's view of the evidence, on summary judgment the court must construe all inferences in favor of plaintiff, and the court may not make credibility determinations or weigh conflicting evidence. Nelson v. City of Davis, 571 F.3d 924, 927 (9th Cir. 2009). In particular, issues of fact remain with respect to the number of defendants' employees, the scope and nature of plaintiff's duties when she returned from maternity leave, and the reasons for the adverse employment actions taken against plaintiff. Further, I agree with Magistrate Judge Coffin that equitable estoppel may bar defendants from asserting that the FMLA does not apply, given the facts presented by plaintiff.

In response to one objection raised by defendants, the court clarifies that the Oregon Bureau of Labor and Industries found "substantial evidence" of an unlawful employment practice in violation of OFLA and found "no substantial evidence" of an unlawful discrimination based on sex in violation of Or. Rev. Stat. § 659A.030. Middleton Decl. Ex. 22 at 7-8 (doc. 42-6).

Accordingly, with that clarification, Magistrate Judge Coffin's Findings and Recommendation dated December 4, 2012 (doc. 48) is ADOPTED, and defendants' motion for summary judgment (doc. 26) is DENIED.

IT IS SO ORDERED.

Dated this 26th day of March, 2013.



Ann Aiken
United States District Judge